

Message Text

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ACTION AF-18

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FM AMEMBASSY KHARTOUM

TO SECSTATE WASHDC IMMEDIATE 8348

INFO AMEMBASSY BRUSSELS

C O N F I D E N T I A L KHARTOUM 1412

E.O. 11652: GDS

TAGS: PINS, SU

SUBJECT: KHARTOUM ASSASSINATIONS: SUPERIOR COURT TRIAL

REF: KHARTOUM 1275

1. SUMMARY: SUPERIOR COURT MET ON SCHEDULE JUNE 15 AND HEARD STRONG CLOSING SUMMATION FROM PROSECUTION WHICH NOT ONLY HIGHLIGHTED FACT BRUTAL CRIME COMMITTED BUT ALSO REJECTED POLITICAL ARGUMENTS WHICH DEFENSE MIGHT USE JUSTIFY THIS ACT. DEFENSE CLAIMED IT HAD ONLY RECEIVED PROSECUTION STATEMENT AFTER COB JUNE 10 AND THAT IT THEREFORE NOT READY RESPOND. IT WAS AGREED DEFENSE WOULD HAVE ADDITIONAL DAY. COURT WILL RECONVENE SUNDAY 16 JUNE TO HEAR DEFENSE SUMMATION. END SUMMARY

2. PROSECUTOR GENERAL ABDEL MONEIM MUSTAFA PRESENTED CLOSING ARGUMENTS TO SUPERIOR COURT IN ONE HOUR FORTY-FIVE MINUTE STATEMENT JUNE 15. MUSTAFA DESCRIBED EVENTS FROM BEGINNING (ENTRY TERRORISTS INTO COUNTRY) TO END (AUTOPSIES). HE QUOTED HEAVILY FROM CONFESSIONS AND STRESSED: (A) PRE PLANNING OF ACTION WITH DEEP FATAH REPEAT FATAH INVOLVEMENT; (B) FACT THAT FROM FIRST CONTACT WITH VICE PRESIDENT BAGHIR AFTER SEIZING SAUDI EMBASSY
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DEFENDANTS HAD SAID EITHER MEET OUR DEMANDS OR WE WILL KILL HOSTAGES;

(C) THAT MIN HEALTH ABUL GASIM, WHEN HE MET WITH TERRORISTS PRIOR MURDERS, HAD TOLD THEM THAT HOSTAGES WERE RESPONSIBILITY OF SUDAN AND SHOULD NOT BE HARMED; (D) BRUTAL NATURE OF MURDERS WITH VICTIMS TIED AND WITH TERRORIST LEADER RIDZIK AL-QAS ACKNOWLEDGING THAT TERRORISTS, WHILE KNOWING TWO-THREE BULLETS WOULD BE FATAL, HAD FIRED MORE TO SHOW GRUDGE AGAINST "IMPERIALISTS"; AND (E) REFUSAL BY TERRORISTS EITHER RELEASE BODIES OR PROTECT THEM WITH ICE AFTER MURDERS UNTIL GIVEN CODE WORD FROM ARAFAT THROUGH BAGHIR.

3. MUSTAFA THEN REFUTED LIKELY ARGUMENTS IN DEFENSE SUMMATION. REGARDING REQUEST THAT LAW OF WAR BE APPLIED SINCE TERRORISTS REPS OF PALESTINIAN REVOLUTION WHICH SUDAN RECOGNIZED (KHARTOUM 1235), MUSTAFA POINTED OUT THAT DEFENSE HAD ALREADY, DURING COURSE MAGISTERIAL INQUIRY, MADE CLAIM THAT SUDANESE LAW DID NOT APPLY. THIS HAD BEEN DULY REJECTED BY PROPER AUTHORITY, PROVINCE JUDGE. MUSTAFA, READING APPROPRIATE SECTIONS OF VIENNA CONVENTION, RE-EMPHASIZED SUDAN'S OBLIGATION TO PROTECT PERSONS AND PROPERTY OF DIPLOMATS. HE WENT ON TO NOTE THAT EVEN IN STATE OF WAR SO LONG AS DIPLOMATIC RELATIONS REMAINED SUDAN WOULD HAVE SUCH OBLIGATION.

4. REGARDING PUTATIVE CLAIM OF SELF-DEFENSE ON SOMEWHAT UNCLEAR BASIS THAT FEDAYEEN ALWAYS SUBJECT TO ATTACK (EMBASSY UNAWARE SUCH ARGUMENT RAISED), MUSTAFA STRESSED HOSTAGES UNARMED AND IN FACT UNDER TOTAL CONTROL OF ACCUSED. THUS SELF-DEFENSE CLAIM HAD NO BASIS

AS FOR CLAIM DEFENDANTS FORCED ACT BY PRESIDENT NIXON'S ARROGRANCE (KHARTOUM 1275), MUSTAFA REJECTED THIS ARGUMENT SAYING VICTIMS HAD DONE NOTHING. WHATEVER MIGHT HAVE BEEN SAID BY PRESIDENT CAME FROM OUTSIDE AND HAD NOTHING DO WITH KILLINGS IN SAUDI EMBASSY. FINALLY, WITH REGARD TO POSSIBLE CLAIM THAT SINCE IT NOT POSSIBLE ESTABLISH WHICH OF DEFENDANTS MIGHT HAVE ACTUALLY BEEN RESPONSIBLE FOR WHICH DEATHS AND THEY AS RESULT SOMEHOW LESS GUILTY, MUSTAFA CITE PRECEDENTS ON CASES OF COLLECTIVE KILLINGS. EVEN IF IT COULD BE PROVED THAT ONE DEFENDANT FIRED ONLY ONE NON-FATAL SHOT, HE WOULD NEVERTHELESS BE EQUALLY GUILTY OF MURDER UNDER LAW.

5. REGARDING POSSIBLE POLITICAL JUSTIFICATION, MUSTAFA DENIED THAT THIS WAS REVOLUTIONARY ACT. HE SAID SUCH ACTS SHOULD BE PERFORMED ON BATTLEFIELD. HE CITED WORLD CONDEMNATION OF ISRAELIS JUST PRIOR TO MURDERS FOR SHOOTING DOWN LIBYAN PLANE AND

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IMPROVEMENT IN ARAB POSITION AS RESULT. THEN HAD COME KHARTOUM MURDERS WHICH HAD TURNED TABLES UPSIDE DOWN AND PUT ARABS IN CRITICAL POSITION. SUDAN DID SUPPORT PALESTINIAN CAUSE AS PRESIDENT NIMEIRI HAD SAID MANY TIMES, BUT THIS ACT HAD HARMED NOT HELPED THAT CAUSE. MOREOVER, HAD DCM MOORE BEEN AS GREAT MENACE TO PALESTINIAN CAUSE AS ACCUSED ALLEGED, HOW COULD THEY HAVE CONTEMPLATED

RELEASING HIM IF THEIR DEMANDS MET. MUSTAFA ALSO CITED ANTI-SUDANESE

ASPECTS OF ACT. HE NOTED, WHEN TERRORISTS STORMED EMBASSY AND FIRED IN AIR, THIS HAD BEEN AN INITIAL SHOCK TO SUDANESE PEOPLE WHO PEACEFULLY CELEBRATING THEIR UNITY ANNIVERSARY. HE ALSO NOTED INCLUSION OF ETHIOPIAN AMBASSADOR ON LIST OF TARGETS AND, RELATING THAT TO PRESENCE OF ETHIOPIAN EMPEROR HAILE SELASSIE IN KHARTOUM SAME DAY FOR CELEBRATIONS, STRESSED THIS HARDLY FRIENDLY ACT TOWARD SUDAN.

IN CLOSING, MUSTAFA CITED ELEMENTS HISTORIC ARAB CODE OF CONDUCT. BOTH THESE AND WRITINGS OF PROPHET MUHAMMAD CONDEMNED SUCH ACTS.

PROSECUTOR ASKED THAT COURT FIND DEFENDANTS GUILTY OF PREMEDITATED MURDER (HE DID NOT ADD THAT THIS WOULD PAN DEATH UNDER SUDANESE LAW).

7. DEFENSE THEN CLAIMED THAT, CONTRARY TO COURT'S INSTRUCTIONS, (REFTEL), PROSECUTION HAD NOT DELIVERED ITS SUMMATION STATEMENT UNTIL AFTER CLOSE OF BUSINESS JUNE 10. DENIED ONE OF ALLOTTED WORKING DAYS TO PREPARE REBUTTAL, DEFENSE CLAIMED IT NOT YET READY RESPOND AND ASKED FOR MORE TIME. AFTER SOME DISCUSSIONS, CHIEF DEFENSE ATTORNEY MIRGHANI EL-NASRI FORMALLY ASKED FOR AND WAS GRANTED TWENTY-FOUR HOUR EXTENSION UNTIL SUNDAY MORNING, JUNE 16.

8. COMMENT: IMPRESSION OF EMBASSY OBSERVER ON SPOT AS WELL AS OUR READING OF ORAL RECOUNTING OF MUSTAFA'S ARGUMENTS IS THAT STATEMENT WAS EXTREMELY FIRM WITH NO EXTENUATING CIRCUMSTANCES ACKNOWLEDGED. WHILE SUDANESE JUDICIARY HAS REPUTATION FOR BEING INDEPENDENT, SUCH EFFECTIVE COUNTERING OF DEFENSE ARGUMENTS WOULD SUGGEST EITHER: (A) REGIME PREPARED PERMIT A LINE WHICH WOULD MAKE IT MORE DIFFICULT JUSTIFY SHARP REDUCTION OF SENTENCES DURING REVIEW PROCESS; OR (B) REGIME UNAWARE IN ADVANCE PROSECUTOR'S SUMMATION WHICH STILL WOULD SEEM MAKE CLEMENCY HARDER SUPPORT. REMAINS BE SEEN WHETHER DEFENSE CONFIDENTIAL

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MAY CITE IN REBUTTAL POINTS NOT ALREADY REFUTED BY PROSECUTION, BUT RIDZIK FOR ONE WAS SWEATING IN COURT JUNE 15--AND COURT ROOM WAS NOT THAT HOT. THOUGH PLO REP ABU KHEIR BELIEVED BACK FROM CAIRO MEETING, HE WAS NOT IN COURT.

BREWER

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